COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 9, 2001

COMMONWEALTH OF VIRGINIA

At the relation of the

State Corporation Commission CASE NO. PUE010296

Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for customer minimum stay periods

FINAL ORDER

Section 56-577 E of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia) ("the Act"), directs the State Corporation Commission ("Commission") to promulgate regulations establishing whether and, if so, for what minimum periods, customers who request service from an incumbent electric utility at capped rates pursuant to § 56-582 D or from a default service provider, after a period of receiving service from other suppliers of electric energy, shall be required to use such service from such incumbent electric utility or default service provider, as determined to be in the public interest (hereinafter, "minimum stay period").

The Commission initiated this proceeding on May 15, 2001, to consider regulations for minimum stay periods. To facilitate the development of possible regulations, we directed our Staff to reconvene the work group from the Commission proceeding that developed proposed rules governing retail access to competitive energy services ("Retail Access Rules"),[1] and we further directed the Staff to file proposed rules and a report.

The Staff filed on June 26, 2001, its Staff Report on Proposed Rules Governing Minimum Stay Periods ("Report"). The Report explained that the different pricing mechanisms existing for regulated, or capped rate, electricity supply service versus competitive electricity supply service, coupled with an electric local distribution company's ("LDC") statutory obligation to make service available at capped rates within its service territory, give rise to the potential need for minimum stay periods. In combination, these two factors create the economic incentives for astute retail customers to seek, as well as competitive service providers ("CSP") to offer, electricity supply service from the competitive market during low demand periods when prices in the wholesale market are below the LDC's capped rate service, and for such customers to return to capped rate service for periods when market demand is high and wholesale prices are expected to exceed such capped rates.[2]

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[1] Commonwealth ex rel. State Corp. Comm'n, Ex Parte: In the matter of establishing rules for retail access, Case No. PUE010013, Final Order, June 19, 2001. Rules codified at 20 VAC 5-312-10 et seq.

[2] The Staff noted that its discussion and proposal is limited in applicability to the LDC provision of capped rate service, including default service under capped rates, as the provision of all aspects of default service pursuant to § 56-585 has not yet been established.

The Staff stated that price-induced switching between the competitive and regulated markets is economically rational and, if allowed, should be expected; however, customers that return to capped rate service during high cost periods, paying only average cost, could impose significant additional economic costs on the LDC and/or its customers through higher fuel or power supply costs and/or reduced competitive or regulated sales margins. The Staff reported that LDCs generally desire a 12-month minimum stay period for all customers returning to capped rate service from the competitive market, whereas CSPs and large industrial customers generally oppose the establishment of any minimum stay period.

The Report reviewed minimum stay periods adopted in other states implementing retail access. Rules in those states vary from no minimum stay requirement at all to a one-year minimum stay period, with some accompanied by a market-based pricing option as an alternative to the specified minimum stay period. The majority of other states' minimum stay requirements apply to non-residential customers only.

The Staff sought to balance the concerns of LDCs regarding the financial impact of the short-term return of customers to capped rate service during high cost periods against efforts to advance the development of a competitive market and to encourage customers to exercise their right to choose a CSP.

The Staff found that the adoption of a simple 12-month minimum stay period is appropriate for large customers, whose return to capped rate service pose significant financial risks to the LDC or other customers, but it had difficulty in drawing the line to define such customers, especially prior to any actual market development. The Staff concluded it would be preferable to start with a less restrictive minimum stay period in terms of customer applicability and to closely monitor market development to ascertain what adjustments may be needed or desirable, based on actual experience. The Staff proposed a customer applicability threshold ranging between 200 kW and 500 kW of demand, and used a 300 kW annual peak demand threshold in its proposed rule.[3]

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[3] The minimum stay period rule proposed by the Staff is set forth below as an amendment to the Commission's recently approved Retail Access Rules by adding a term to the "Definitions" section in 20 VAC 5-312-10 and a rule to the "Enrollment and Switching" provisions in 20 VAC 5-312-80:

> 20 VAC 5-312-10
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> "Minimum stay period" means the minimum period of time a customer who requests electricity supply service from the local distribution company, pursuant to § 56-582 D of the Code of Virginia, after a period of receiving electricity supply service from a competitive service provider, is required to use such service from the local distribution company.
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> 20 VAC 5-312-80
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> Q. The local distribution company may require a 12-month minimum stay period for electricity customers with an annual peak demand of 300 kW or greater. Such customers that return to capped rate service provided by the local distribution company as a result of a competitive service provider's abandonment of service in the Commonwealth may choose another competitive service provider at any time without the requirement to remain for the minimum stay period of 12 months.

The Staff further proposed that these minimum stay issues be re-evaluated in late 2002 to consider the experience gained during the 2002 summer peak demand period. Such re-evaluation could also include consideration of a market-based pricing option for a customer's short-term return to capped rate service that would allow a customer to avoid a required minimum stay period.

The following parties filed comments on the Report and the proposed minimum stay rules: Division of Consumer Counsel, Office of Attorney General; AES NewEnergy, Inc.; The New Power Company; the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates (the "Industrial Committees"); the Town of Wytheville and the VML/VACo APCo Steering Committee (collectively, "Public Authorities"); Appalachian Power Company, d/b/a American Electric Power ("AEP-VA"); Delmarva Power & Light Company ("Delmarva"); The Potomac Edison Company, d/b/a Allegheny Power; Virginia Electric and Power Company ("Dominion Virginia Power"); the Virginia, Maryland & Delaware Association of Electric Cooperatives, and thirteen member distribution cooperatives (collectively, the "Cooperatives"); and Washington Gas Light Company ("WGL").

The Consumer Counsel generally supports the Staff minimum stay proposal. It recommends that customers should receive written notification of minimum stay requirements before the restrictions become applicable, and suggests that notice be included in CSPs’ written contracts with customers. AES NewEnergy recommends that minimum stay periods be adopted only when all other means of deterring seasonal contracting are exhausted; and that if minimum stay provisions are imposed, customers should be given more flexibility to contract with a CSP for supply service. The New Power Company states that it opposes minimum stay rules as harmful to customers, but it generally supports the Staff proposal. It, however, urges the Commission to adopt a 500 kW threshold instead of the 300 kW threshold proposed by Staff. New Power states that customers that would be subject to the minimum stay rule at this higher threshold are able to exercise some control over usage, and therefore price, and it notes that 500 kW is the cut-off for the standard tariff provision of interval metering in the case of Dominion Virginia Power.

The Industrial Committees oppose the Staff's proposed rule as being unduly restrictive of customer choice and the development of a retail competitive market in Virginia. They argue that the experience from electric retail access pilot programs in the Commonwealth does not provide the basis for concluding there is potential for significant impact on either the LDC or capped rate customers from not having a minimum stay requirement.

The Public Authorities are concerned that any limitation on retail customers to choose an alternative supplier will have a negative impact on the development of a competitive retail electricity market in Virginia. They urge the Commission to either defer establishment of a minimum stay period or to raise the kW threshold for imposing such a requirement. They also contend any minimum stay requirement should be limited to periods of high cost and high demand.

AEP-VA, Delmarva, Allegheny Power, and the Cooperatives contend there should be a 12-month minimum stay requirement applicable to all customers. Dominion Virginia Power supports a 12-month requirement applicable to customers on a rate schedule, rather than a kW, basis.[4] If the Commission were to adopt an explicit kW demand level, Dominion Virginia Power urges that it be imposed at 30 kW.

WGL noted that the proposed minimum stay rule would apply only to electric LDCs and their customers, and stated that such is not necessary or appropriate at this time for natural gas LDC retail access programs.

Several parties proposed various alternatives to the proposed rule to offer greater flexibility to customers, CSPs and LDCs. Such proposals include grace periods for returning customers before minimum stay provisions would become effective, limiting the minimum stay period to 6 months, and exit fees or market-based pricing alternatives that would allow a returning

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[4] AEP-VA, Allegheny Power, and Delmarva also support basing any threshold on rate service classifications if the Commission does not accept their proposal to impose minimum stay requirements on all customers.

customer to leave an LDC before expiration of the minimum stay period.

NOW THE COMMISSION, upon consideration of the Staff Report, the parties' comments, and the requirements of the Restructuring Act, is of the opinion and finds that rules should be promulgated governing customer minimum stay periods. We make this finding with reluctance, however. We would prefer to allow all customers unfettered access to their choice of electricity suppliers so as to encourage the creation of a competitive market void of artificial constraints inhibiting economically rational behavior. In determining what rules, if any, to impose, we recognize the potential for material adverse financial impact on LDCs (and, in some instances, their capped rate customers) caused by significant customer switching between competitive and regulated markets with seasonal changes in wholesale prices of electricity.

The Staff sought in its proposal to strike a balance between concerns with the financial impact of the short-term return of customers to capped rate service during high cost periods versus efforts to advance the development of a competitive market and to encourage customers to exercise their right to choose alternative suppliers. We believe the Staff approach of a simple and limited rule is the correct approach at this time, and we will adopt its proposed rule, 20 VAC 5-312-80 Q, with modification. We will raise the customer annual peak demand threshold for imposing a minimum stay requirement from 300 kW to 500 kW.[5] We retain a kW-based threshold rather than using a rate schedule basis since rate schedules differ among the LDCs and the kW-based threshold we adopt applies uniformly to only the largest customers.

We considered strongly imposing no minimum stay requirement as there is insufficient evidence at this preliminary stage of retail competition in Virginia to demonstrate conclusively that it is warranted. We would rather permit retail competition in the Commonwealth to operate without regulatory restrictions on a customer's choice of electricity suppliers until there is clear evidence that some material harm to LDCs will indeed result absent a minimum stay requirement. However, we recognize that many large customers of the LDCs are sophisticated and may reasonably be expected to respond to economic opportunities that could expose the LDCs to potentially significant economic harm.

The rule we adopt should protect LDCs from the major loads that return for short-term capped rate service while minimizing regulatory obstacles to the development of a competitive market. To the extent the LDCs will be subject to some risk under the 500 kW threshold, this is simply a risk they will be required to incur as a partner in the incipient competitive marketplace for

[5] While we do not alter the rule as proposed in other respects, we do note that the exception to the rule for customers dropped by a CSP that has abandoned service in Virginia would not extend to a CSP that only dropped its customers for a high cost period yet otherwise remains in business in the Commonwealth. The exception applies to CSPs that actually cease to be suppliers.

electricity in Virginia. We will, however, afford LDCs the opportunity to collect and furnish to the Commission data that would support alternative minimum stay requirements including making a minimum stay period applicable to customers with annual peak loads of less than 500 kW. Rule 20 VAC 5-312-80 R will permit any LDC to seek alternative requirements upon application to the Commission provided a request for such is supported with detailed information collected from the LDC's experience with retail choice in its Virginia service territory.[6]

To ensure that reasonably adequate data is available for an evaluation of any proposed expansion to the customer applicability of minimum stay period requirements, LDCs should include in any request for imposing such a more expansive requirement, at a minimum, the following information, or its equivalent, to demonstrate the specific scope, nature, and financial impact of customers' short-term return to capped rate service relative to potentially affected customers for the most recent summer peak demand switching cycle (April through November) and/or winter peak demand switching cycle (November through April):

[6] We recognize that the provisions of the rule we adopt will necessarily limit the scope of data available to be collected and studied once retail choice begins. Obviously, there will be no short-term switching back and forth among CSPs and LDCs by customers whose peak demand is at or above the threshold level adopted in the rule. The ability to monitor and analyze the activity of many customers unencumbered by restrictions in a competitive market further favors the setting of a higher threshold for minimum stay requirements.

1) The total number of the LDC's distribution service customers subject to the proposed expanded applicability of the rule and the respective corresponding load at the time of the filing, categorized by customer type (residential and non-residential) and size (reasonably-sized increments of annual peak demand);[7]

2) The total number and corresponding load of retail customers subject to the proposed expanded applicability of the rule that received competitive electricity supply service as of the end of each month, categorized by above customer type and size;

3) The total number and corresponding load of retail customers subject to the proposed expanded applicability of the rule that switched from capped rate service to competitive electricity supply service in each month, categorized by above customer type and size;

4) The number and corresponding load of retail customers subject to the proposed expanded applicability of the rule that returned to capped rate service from competitive electricity supply service in each month, categorized by above customer type and size:

a) With respect to each customer type and size category of retail customers that returned to capped rate service from competitive electricity supply service for each month of April through August, the number and corresponding load of retail customers within each such category and month subsequently returning to competitive electricity supply service in each of the months of August through November;

b) With respect to each customer type and size category of retail customers that returned to capped rate service from competitive electricity supply service for each month of November through February, the number and corresponding load of retail customers within each such category and month subsequently returning to competitive electricity supply service in each of the months of February through April; and

[7] We note that increment size based on certain rate schedules are too broad to allow adequate analysis for making a critical decision that potentially will limit the competitive choices of retail customers. For example, certain rate schedules encompass a customer demand range of over 400 kW. Generally we would expect the increment sizes to approximate 50 kW to 100 kW.

> 5) The estimated net financial impact on the LDC and/or its other capped rate customers resulting from the short-term return of retail customers subject to the proposed expanded applicability of the rule to capped rate service during peak demand periods, including all supporting assumptions, documentation, and calculations.

As noted, several parties proposed various alternatives to the proposed rule such as market-based pricing by LDCs in lieu of a minimum stay requirement, exit fees, grace periods, and a shorter 6-month minimum stay period. We will direct the Staff to study such alternatives that may offer flexibility to customers, CSPs and LDCs and to submit a report on its findings.

Although premature at this time, the applicability of customer minimum stay periods may be considered upon the Commission's determination of one or more default service providers pursuant to § 56-585 of the Code of Virginia.

Finally, we will adopt rules relative to the recommendation of the Consumer Counsel for customers to receive notice of the minimum stay period requirement. Specifically, we will amend Retail Access Rule 20 VAC 5-312-70 C 3 to add a requirement that CSP customer service contracts include disclosure of any potential minimum stay requirements of the LDC. We also adopt Rule 20 VAC 5-312-80 S requiring an LDC to give customers 30 days written notice of its minimum stay period requirements, and stating that customers who have selected a CSP prior to receiving notice from the LDC will not be subject to a minimum stay period until the customer renews an existing contract or chooses a new CSP.

Accordingly, IT IS ORDERED THAT:

(1) Rules governing customer minimum stay periods are hereby adopted as set forth in the Attachment to this Order, amending the Commission's Rules Governing Retail Access to Competitive Energy Services.

(2) Electric local distribution companies shall conform their respective tariffs to comply with the requirements of the minimum stay rule adopted herein.

(3) Competitive service providers and electric local distribution companies shall provide written notice of minimum stay requirements to customers subject to the rule pursuant to Retail Access Rules 20 VAC 5-312-70 C 3 and 20 VAC 5-312-80 S as adopted and set forth in the Attachment to this Order.

(4) Any electric local distribution company desiring to impose a minimum stay requirement more expansive than Retail Access Rule 20 VAC 5-312-80 Q adopted herein must make an application to the Commission for approval of a different requirement. Any such application shall, at a minimum, be supported with the data detailed above in this Order.

(5) The Commission Staff shall investigate and give further consideration to alternatives to the minimum stay rule that would advance the development of competition in the Commonwealth. The Staff shall file a report with the Commission on or before March 31, 2003, detailing its re-evaluation of minimum stay issues.

(6) This matter is dismissed and the papers herein shall be placed in the file for ended causes.

RULES GOVERNING CUSTOMER MINIMUM STAY PERIODS

Applicability; Definitions
20 VAC 5-312-10

"Minimum stay period" means the minimum period of time a customer who requests electricity supply service from the local distribution company, pursuant to § 56-582 D of the Code of Virginia, after a period of receiving electricity supply service from a competitive service provider, is required to use such service from the local distribution company.

Marketing
20 VAC 5-312-70

C. Customer service contracts shall include:

3. provisions for termination by the customer and by the competitive service provider including disclosure of any potential minimum stay requirements of the local distribution company;

Enrollment and Switching
20 VAC 5-312-80

Q. The local distribution company may require a 12-month minimum stay period for electricity customers with an annual peak demand of 500 kW or greater. Electricity customers that return to capped rate service provided by the local distribution company as a result of a competitive service provider's abandonment of service in the Commonwealth may choose another competitive service provider at any time without the requirement to remain for the minimum stay period of 12 months.

R. The local distribution company may, upon a proper showing with evidence acquired by actual experience, apply for approval from the State Corporation Commission to implement alternative minimum stay period requirements. If the applicant proposes to lower the applicability limit below 500 kW, such application shall include at a minimum, the detailed information prescribed by the State Corporation Commission in the text of its Final Order in Case No. PUE010296, or as may be revised in a subsequent order.

S. The local distribution company electing to implement a minimum stay period in conformance with this chapter shall notify, in writing, applicable customers at least 30 days in advance of such implementation date and within each subsequent notification letter as required by 20 VAC 5-312-80 I. Electricity customers who have selected a competitive service provider prior to the local distribution company's notice of implementing a minimum stay period will not be subject to the minimum stay period until such time as the customer renews an existing contract or chooses a new competitive service provider.